

# **Bond Case Briefs**

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## **ZONING & PLANNING - NEW HAMPSHIRE**

### **Anthony v. Town of Plaistow**

**Supreme Court of New Hampshire - May 16, 2023 - A.3d - 2023 WL 3471177**

Landowners sought review of town planning board's granting of site-plan approval for the development and consolidation of two neighboring lots in town's commercial zoning district.

The Superior Court affirmed. Landowners appealed.

The Supreme Court held that:

- Landowners could not raise argument that board erred when it determined that use of lots complied with zoning ordinance;
- Board adequately considered the potential for regional impact; and
- Board acted reasonably and lawfully in approving site plan.

To the extent that landowners were seeking appellate review of trial court's judgment affirming zoning board of appeal's (ZBA) decision that it lacked jurisdiction to consider landowners' challenge to decision that a neighboring landowner's proposed use of lots complied with zoning ordinance, that issue was not properly before the Supreme Court; landowners did not appeal trial court's judgment before it became final, which meant that any appeal was deemed waived.

When appealing from superior court's affirmance of town planning board's granting of site-plan approval for the development and consolidation of two lots in town's commercial zoning district, neighboring landowners could not raise argument that board erred when it determined that use of lots complied with zoning ordinance; neighboring landowners had already appealed to have zoning board of appeals (ZBA) review the compliance determination, but the ZBA had dismissed that appeal.

Planning board adequately considered the potential for regional impact when approving site plan for the development and consolidation of two lots in town's commercial zoning district; at the public hearing, town's planning director discussed regional impact issues and testified that in his 16 years of experience, he had never worked on a commercial development that had caused any regional impact, and board was also aware that the project would not impact ground or surface water, that the site was located in the center of the town, and that the project would minimally affect traffic in the area.

Town's planning board acted reasonably and lawfully in approving site plan for the development and consolidation of two lots in town's commercial zoning district; board subjected application to a rigorous review process, including numerous public hearings and a site visit, and at each stage of the process, abutters' concerns about water quality, wetlands preservation, pollution, noise, and buffering were addressed by applicant or board.

